

**DEPARTMENT OF STATE REVENUE**

13960314.LOF

**LETTER OF FINDINGS NUMBER: 96-0314 MFT**

**Motor Fuel Tax**

**For The Period: 11/30/95**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Tax Administration - Penalty**

**Authority:** IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalty assessed on their motor fuel tax payments.

**STATEMENT OF FACTS**

The taxpayer operates a gasoline and service station. The taxpayer states that his bookkeeper was having problems and left the company around the time of the Electronic Funds Transfer (EFT) due date. The taxpayer had his Certified Public Accountant (CPA) come to the office and get his books in order.

In order to avoid penalty, an EFT must be filed by 4 p.m. on the day preceding the due date. The CPA states that he spent all afternoon arranging his client's books and was unaware of the 4 p.m. deadline. He states that he filed the payment at 5 p.m. The Department assessed a negligence penalty on the taxpayer.

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**DISCUSSION**

The Department may impose a ten percent (10%) negligence penalty under IC 6-8.1-10-2.1. This code section states, in pertinent part, that if "the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty." Further, 45 IAC 15-11-2 states that "negligence on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

The Department provides notice of the 4:00 p.m. deadline to the taxpayer on its EFT Touchstone Instruction form, the Telephone Tax Payment Question and Answer form, and in the EFT Program Information Guide and Registration Packet. The taxpayer's failure to follow the Department's publicized instructions is the lack of reasonable care, caution, or diligence that is the criteria for a negligence penalty.

As stated, the Department will only waive a penalty for reasonable cause. The Department has shown leniency to this taxpayer in the past. There have been some legitimate reasons for the late filings; however in this situation, the taxpayer has no reason not to be aware of its duty to timely file its EFT payment.

**FINDING**

The taxpayer's protest is denied. The penalty will not be waived.